

### **Remarks**

Applicants have canceled claims 1, 3-20 without prejudice or disclaimer and added new claims 21-28. Accordingly, upon entry of the present amendment, original claims 2, and new claims 21-28 will be pending. Applicants hereby reserve the right to pursue canceled subject matter in subsequently filed continuing applications.

New claims 21-28 have been added in order to claim additional embodiments of the subject matter of the provisionally-elected group. Support for these claims can be found throughout the specification as filed.

The specification has been amended to add priority information, to add the address of the depository, to add the depository designation number and date for the cDNA deposited under the Budapest Treaty, to amend the SEQ ID NOs to correspond with the sequences in the Sequence Listing, and to reflect the drawing designations provided for in the formal drawings submitted December 10, 2001.

Accordingly, no new matter has been added.

### **The Restriction Requirement**

Pursuant to the Office Action, mailed June 17, 2004, the Examiner has required an election under 35 U.S.C. § 121 of one of Groups I-XIV. The Examiner contends that the inventions are distinct, each from the other.

In response, Applicants provisionally elect, *with traverse*, the invention of Group II, represented by new claims 21-28, drawn to polypeptides, for further prosecution. Applicants reserve the right to file one or more divisional applications directed to non-elected inventions should the restriction requirement be made final. Applicants point out that claims 1, 3-20 have been canceled without prejudice or disclaimer, and that new claims 21-28 are directed to subject matter falling within the ambit of Group II as cast by the Examiner.

With respect to the Examiner's division of the invention into fourteen groups and the reasons stated therefore, Applicants respectfully disagree and traverse. Even assuming, *arguendo*, that Groups I-XIV represented distinct and independent inventions, restriction

remains improper unless it can be shown that the search and examination of all groups would entail a "serious burden." M.P.E.P. § 803.

In the present situation, although the Examiner has argued that Groups I-XIV are directed to divergent subject matter and have allegedly acquired a separate status in the art, Applicants nonetheless submit that a search of the claims of any of the groups would also provide useful information for the claims of the other groups. This is because the evolution of one is tied to the existence of the other. Moreover, in many if not most publications, where a published polynucleotide is shown, the authors also include the polypeptides, and methods of using the same. Thus, the searches for polynucleotides polypeptides, methods of using would be overlapping.

Similarly, a search of the claimed polypeptides of the invention would clearly provide useful information for the examination of claims directed to antibodies either produced in response to or having affinity for the subject polypeptides. This is because antibodies are frequently defined by the antigens that they are produced in response to and the epitopes to which they bind. Moreover, in many publications where an antibody is described, the antigen that it was produced in response to is also described. Thus, the searches for polynucleotides polypeptides, antibodies, and methods of using would be overlapping.

In view of the above, Applicants respectfully submit that the searches for polynucleotides, polypeptides, antibodies, and methods of diagnosing and treating disease states using the nucleic acids and proteins of the subject invention would clearly be overlapping.

Accordingly, in view of M.P.E.P. § 803, the claims of all of Groups I-XII should be searched and examined together in the present application. Applicants therefore respectfully request that the restriction requirement under 35 U.S.C. § 121 be reconsidered and withdrawn.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.


### **Conclusion**

Entry of the above amendment is respectfully solicited. In view of the foregoing remarks, Applicants believe that this application is now in condition for examination, and an early notice to that effect is urged. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the examination of this application.

Finally, if there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the appropriate fee should also be charged to our Deposit Account.

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Respectfully submitted,

By   
Mark J. Hyman  
Registration No.: 46,789  
HUMAN GENOME SCIENCES, INC.  
14200 Shady Grove Road  
Rockville, Maryland 20850  
(240) 314-1224

MJH/DAS/KC/lcc